IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6967 of 1997
With
SPECIAL CIVIL APPLICATION No. 8750 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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OPERATION RESEARCH GROUP - Petitioner
Versus
J M GATAK - Respondent

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Appearance :
MR NANDISH CHUDGAR FOR NANAVATI ASSOCIATES for Petitioner.
MR NR SHAHANI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/02/2006

COMMON ORAL JUDGMENT

1.Special Civil Application No. 6967 of 1997 is fled by the Company, namely, Operation Research Group (now known as A C Nielsen ORG MARG Private Limited) under Article 226 & 227 of the Constitution of India praying for quashing and setting aside the award passed by the Industrial Tribunal, Baroda in Complaint (I.T.) No. 39 of 1996 in Reference (I.T.) No. 605 of 1984 as being illegal, unjust, improper, against the settled provisions of law and contrary to the evidence on record in as much as the same is without authority of law and without jurisdiction on the ground that the petitioner is not an industrial establishment as defined in the Industrial Employment Standing Order Act, 1946 and, therefore, the Model Standing Orders as prescribed under the Act are not applicable to the petitioner.

2.The Industrial Tribunal vide its impugned award dated 04.06.1997 had held that the action of the petitioner Company in superannuating the respondent w.e.f. 30.11.1995 is illegal and directed the petitioner Company to reinstate the respondent and to make payment of the wages to the respondent from the date of the award.

3.Mr. J.A. Ghatak, the workman has also filed Special Civil Application No. 8750 of 1997 challenging the very same order of the Industrial Tribunal passed on 04.06.1997 in Complaint (I.T.) No. 39 of 1996 in Reference (I.T.) No. 605 of 1984. The petitioner has also prayed for the direction to the respondent Company to permit the petitioner to work till 30.11.1997 and sought further direction to the respondent to pay all arrears of wages for the intervening period of 21 months.

4.The Industrial Tribunal has not awarded back wages for the period during which the petitioner has not worked.

5.Since both these petitions are filed against the same award of the Industrial Tribunal, the same are heard together and are being disposed of by this common judgment.

6.It is the case of the petitioner in Special Civil Application No. 6967 of 1997 that the petitioner company was established in the year 1960 and was initially a division of Sarabhai Group of Companies. The petitioner company was established for the purpose of carrying out market research and consultancy services. The said ORG was registered separately under the provisions of the Bombay Shops & Establishment Act w.e.f. 24.09.1980. Thereafter, vide an agreement executed between Ambalal Sarabhai Enterprises Limited and Ranoli Machinery

Private Limited, a wholly owned subsidiary of Ambalal Sarabhai Enterprises Limited, on 29.06.1987, the ORG of Ambalal Sarabhai Enterprises Limited was transferred to the said Ranoli Machinery Private Limited and its name was changed to Operation Research (India) Limited. On 11.01.1989, fresh certificate of incorporation was issued under the provisions of the Companies Act, 1956. As per the memorandum of understanding arrived at between the Ambalal Sarabhai Enterprises Limited and one Mr. Ashok Advani on 31.10.1991, Ambalal Sarabhai Enterprises Limited agreed to sell all equity shares of Operation Research (India) Limited, of the face value of Rs. 100/- each held by it being 100% paid up share capital to Mr. Ashok Advani on spot delivery basis on certain terms and conditions enumerated in the said memorandum. With effect from January 1992, all the shares were transferred from Ambalal Sarabhai Enterprises Limited to Mr.

Ashok Advani, who in turn became the owner of the company. At the time when the petition was filed, ORG (India) Limited was a limited company (closely held) and was registered with the Registrar of Companies having Registration No. 2888. Thereafter, the said ORG (India) Limited, a closely held company was merged with Marketing and Research Group in 1995 and a new company by the name of ORG MARG Research Limited was incorporated. In 1999, V.N.U. a globally operating Dutch company took over the management by acquiring shares of ORG MARG Research Limited and thus ORG MARG Research Limited became part of Multinational Company, V.N.U. In October 1999, V.N.U. acquired Nielsen Media Research, a television audience measurement company operating from US and Canada. Thereafter, in December 2000, the said V.N.U. acquired AC Nielsen, the leading provider of customized research and retail measurement services. Thus, with the said

acquisition by V.N.U., the name of ORG MARG Research Limited was changed to AC Nielsen ORG MARG Private Limited by completing the required formalities in accordance with law under the provisions of Companies Act, 1956. Thus, the petitioner company which was originally a division of Sarabhai Group of Companies, is now no more a division of Sarabhai Group of companies of Ambalal Sarabhai Enterprises, but is now a part of Multinational Company and is registered in India under the provisions of the Companies Act, 1956 in the name of AC Nielsen ORG MARG Private Limited and is carrying out consultancy services and market research.

7.The respondent workman was initially appointed as Junior Office Assistant on 22.02.1971. He was confirmed in the services of the petitioner company on 22.08.1971. The respondent was granted gradual promotions and regular increments. The respondent was lastly granted

wage revision w.e.f. 01.04.1995 and was informed by letter dated 14.06.1995 reiterating therein some of the petitioner company's rules and informing that the age of retirement being 58 years to which respondent had agreed to such terms and conditions of service by accepting the said communication. According to the rules and procedure prevailing at all branches of the petitioner Company throughout the country, all the employees are superannuated at the age of 58 years.

8. It is the case of the petitioner company that the petitioner has formulated a scheme known as Employees Group Savings Linked Insurance Scheme with Life Insurance Corporation of India. One of the conditions of which is that the retirement age of the employees covered under the said Scheme is 58 years. The petitioner company has taken the concurrence of the employees, who were interested to enroll in the

scheme by filling in the prescribed forms and informing them about the rules and benefits of the scheme. With effect from 20.12.1987 and onwards, the respondent had also opted to be covered under the benefits of the said scheme and had given his consent in writing in the prescribed application form and the petitioner had also started deducting his premium w.e.f. February, 1988 from his salary as per the conditions of the said scheme along with the arrears for the period of January, 1988. Another such scheme was also floated by the petitioner company for the benefits of its employees known as the Employees Group Gratuity-cum-Life Assurance (Cash Accumulation Scheme), according to which the normal date of retirement for each of the members is the date on which he completes the age of 58 years. The respondent had also opted for the said scheme. Thus, as per the say of the petitioner company, the respondent was very well aware that the

date of superannuation is 58 years and had accepted the same as conditions of service.

9.The respondent was informed vide letter dated 01.11.1995 that he would be superannuated from the services on 30.11.1995 since he would be completing 58 years on 22.11.1995. Accordingly, the respondent was superannuated, his accounts were settled and his dues were duly paid vide letter dated 25.03.1996. The respondent was thereafter serving with the petitioner company w.e.f. 01.12.1995 for a period of three months on a special project work assignment, purely on temporary basis. The appointment of the respondent on temporary project basis was terminated w.e.f. 01.04.1996.

10.Being aggrieved by the said action of the petitioner company, the respondent filed a complaint being Complaint (I.T.) No. 39 of 1996 in Reference (I.T.) No. 605 of 1984 under

Section 33-A of the I.D. Act. The petitioner filed its reply contending inter alia that the petitioner is not an industrial establishment and, therefore, the Model Standing Orders are not applicable to it. Even according to the conditions of service accepted by the respondent, and also according to the practice and customs prevailing in the petitioner company at all branches throughout the country, the age of retirement of all the employees is 58 years and not 60 years.

11.The Industrial Tribunal earlier passed an award on 10.04.1996 on a similar issue, when the petitioner superannuated one Mr. N.G. Mehta on his completion of 58 years, holding the action of the petitioner company as illegal and that the petitioner company is an industrial establishment covered under Section 2 (e) (iv) of the said Act. The said award was challenged before this Court by filing Special Civil

Application No. 6539 of 1996. However, the issue was settled out of Court, pending the petition filed before this Court and order to the said effect was passed on 08.10.1996. Based on its earlier order, the Industrial Tribunal held the action of the petitioner as illegal and directed the petitioner company to reinstate the respondent and to pay wages from the date of the award. It is also held that the petitioner is an industrial establishment covered under Section 2 (e) (iv) of the said Act.

12.It is this award of the Tribunal which is under challenge in this petition.

13.The case of the petitioner workman in Special Civil Application No. 8750 of 1997, who is also the respondent in Special Civil Application No. 6967 of 1997 is that this Court in Special Civil Application No. 12927 of 1994 decided on

12.12.1994 came to the conclusion that the age of 60 years stipulated in Standing Order was applicable to one Shri D.K. Kshirsagar. The applicability of the Model Standing Orders stands concluded by the High Court in another case of Shri Natwarlal Mehta, which is referred to by the Tribunal in para 6 of its award. The moment it is held that the statutory Model Standing Orders are applicable, then there is absolutely no significance that can be attached to a pay fixation letter because there was no fixed policy of pay fixation every year. There is no power available to the employer to modify any of the conditions of Standing Orders to the disadvantage of the concerned worker. Any such change is non-est in the eye of law. Therefore, it is rather surprising and shocking as to why the Tribunal has chosen not to grant back wages for almost 18 to 19 months period. The Tribunal ought to have awarded the back wages for intervening period, except first

three months. The Tribunal has, therefore, fallen in error on this count and hence, the award of the Tribunal is required to be corrected to this extent.

14.Mr. Nandish Chudgar, learned advocate appearing for M/s. Nanavati Associates for the Company has submitted that the issue as to whether the petitioner company is an industrial establishment or not is not covered by the earlier decision as observed by the Tribunal. The petitioner company is not an industrial establishment within the meaning of Section 2 (e) of the Industrial Employment (Standing Orders) Act, 1946. Section 2 (e) of the said Act reads as under :-

"*2 (e) Industrial Establishment means* -

(i) an industrial establishment as defined in clause (ii) of Section 2 of Payment of Wages, 1936 (4 of 1936) or;

(ii) a factory as defined in clause (m) of Section 2 of Factories Act, 1948 (63 of 1948) or;

(iii) a Railway as defined in Clause (4) of Section 2 of the Indian Railways Act, 1890 (9 of 1890) or;

(iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen."

15.He has further submitted that the petitioner company is engaged in the activity of market research and consultancy services. None of the four clauses as enumerated in Section 2 (e) applies to the petitioner establishment. Section 2(a)(i) gives the definition of an industrial establishment means an industrial establishment as defined in clause (ii) of Section 2 of Payment of Wages Act, 1936. None of the clauses enumerated in Section 2 (ii) (a to e) applies to the petitioner establishment. The petitioner establishment is not a factory as defined in Clause (m) of Section 2 of the Factories Act as no manufacturing process is being carried on with or without the aid of

power. The petitioner's establishment is admittedly not a railway as defined in clause 4 of Section 2 of the Indian Railways Act, 1890. The Tribunal has relied on sub-clause (iv) of Section 2 (e) and held that the petitioner is an establishment of a person who, for the purpose of fulfilling a contract with the owner of an industrial establishment, employs workman. There is no contract labour agreement with any other establishment and hence, the said sub-clause does not apply to the facts of the present case.

16.In support of the contention of the petitioner that no manufacturing process is being carried out by the petitioner, Mr. Chudgar has relied on the decision of the Hon'ble Supreme Court in the case of *Aspinwall & Co. Ltd. V/s. Commissioner of Income Tax, Ernakulam, (2001) 7 S.C.C. 525* wherein it is held that the word “manufacture” has not been defined in the Act.

Therefore, it has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand, labour or machines. If the change made in the article results in a new and different article then it would amount to manufacturing activity.

17.Mr. Chudgar has further relied on the decision of the Hon'ble Supreme Court in the case of *Commissioner of Income Tax, Orissa and others V/s. M/s. N.C. Budharaja and Company and others, 1994 Supp. (1) S.C.C. 280* wherein it is held that the word 'articles' is not defined in the Act or the Rules. It must, therefore, be understood in its normal connotation – the sense in which it is understood in commercial world. It is equally well to keep in mind the context since a word takes its colour from the

context. The word “articles” is preceded by words “it has begun or begins to manufacture or produce”. It is difficult to say that the word “articles” in clause (i) of Section 80-HH(2) comprehends and takes within its ambit a dam, a bridge, a building, a road, a canal and so on. To say that all of them fall within the meaning of word 'articles' is to over-strain the language beyond its normal and ordinary meaning. It is equally difficult to say that the process of constructing a dam is a process of manufacture or a process of production. It is true that a dam is composed of several articles; it is composed of stones, concrete, cement, steel and other manufactured articles like gates, sluices etc. But to say that the end product, the dam, is an article is to be unfaithful to the normal connotation of the word. A dam is constructed; it is not manufactured or produced. The expressions 'manufacture' and 'produce' are normally

associated with moveables – articles and goods, big and small – but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road or a building.

18.Mr. Chudgar has further relied on the decision of the Hon'ble Supreme Court in the case of *Indian Hotels Co. Ltd. and others V/s. Income Tax Officer, Mumbai and others, (2000) 7 S.C.C. 39* wherein it is held that in case of preparing food packages or selling the same or preparing foodstuffs for serving in the hotel there is no question of manufacture or production. The raw material is at the most processed so as to make it eatable. The word “manufacture” has various shades of meaning but unless defined under the Act, it is to be interpreted in the context of the object and the language used in the sections. In the context of the provisions which deal with grant of investment rebate or

deduction under Section 80-J it is apparent that it is used to mean production of a new article or bringing into existence some new commodity by an industrial undertaking. It would not be applicable in cases where only processing activity is carried out. Further, such production activity must be by an industrial undertaking and not by an assessee having mainly trading activity. In case of a hotel business there is no question of manufacturing or producing pulses, wheat, rice, meat or such other items but what is done is from such raw materials eatable foodstuff is prepared.

19.Mr. Chudgar has further submitted that the Industrial Tribunal has erred in holding that the petitioner company is an industrial establishment covered by clause (iv) of Sub-section (e) of Section 2 of the said Act. The said clause (iv) covers within its ambit the

establishment, carrying on business for the purpose of fulfilling a contract with other industrial establishment and is employing workmen for that purpose. The said clause (iv) covers within its ambit the establishment, carrying on business for the purpose of fulfilling a contract with other industrial establishment, and is employing workmen for that purpose. Therefore, an establishment of a contractor, who for the purposes of fulfilling a contract with any particular industrial establishment, employs workmen can only be said to be covered by the said definition. At the most, the establishment which is carrying on job work for and on behalf of a particular industrial establishment and for that purpose is engaging workmen may be said to be covered by the definition of the said clause (iv) of sub-section (e) of Section 2 of the Act. However, in the present case, the petitioner company is engaging its employees not for the

purpose of carrying out any work on job work basis for any particular industrial establishment nor is an establishment of a contractor for fulfilling a contract with any particular establishment. There are large number of clients of the petitioner company all over the country, for and on behalf of which the petitioner company is carrying on market research or is rendering services by way of consultants or advisors. He has, therefore, submitted that the petitioner company is not an industrial establishment within the definition of Section 2 (e) of the Act.

20.Mr. Chudgar has further submitted that the petitioner is not an establishment of labour contractor as is assumed by the Tribunal. If the petitioner would be an establishment of Labour contractor of Ambalal Sarabhai Enterprises, as has been assumed by the Tribunal, then, in such case, the petitioner

company as well as Ambalal Sarabhai Enterprises are required to be registered under the provisions of Contract Labour (Regulation and Abolition) Act. It was nobody's case before the Tribunal that petitioner company is an establishment of contract labour for Ambalal Sarabhai Enterprises. The Tribunal has come to an arbitrary conclusion that petitioner company engages workman for the sole purpose of fulfilling the agreement with Ambalal Sarabhai Enterprises, on assumptions and presumptions without an iota of evidence before it.

21.Based on the aforesaid judgments of the Hon'ble Supreme Court on the issue of articles, manufacturing, processing whether it would amount to industrial establishment or not, Mr. Chudgar has strongly urged that the activities carried on by the petitioner establishment cannot be said to be manufacturing of an article and hence, it cannot be considered as

industrial establishment. He has, therefore, submitted that the award passed by the Labour Court is required to be quashed and set aside and the petition be allowed.

22.He has further submitted that the respondent is not entitled to continue in the services of the petitioner company beyond 58 years in as much as, the petitioner company is having common code of services for all its branches throughout the country. According to the rules and practice prevailing in the petitioner company, the age of retirement is 58 years at all its branches in India. Even at the branch of the petitioner company at Baroda, in past also, the employees have retired on their completing the age of 58 years. He has, therefore, submitted that the respondent is not entitled to serve the petitioner company beyond the age of 58 years and the petitioner company was within its right, in retiring the

respondent on his attaining the age of 58 years. The Industrial Tribunal has failed to appreciate that the condition that the age of retirement is of 58 years was also agreed by the respondent, as a condition of services, while agreeing and accepting the letter dated 14.06.1995. The respondent had opted for the scheme and according to the rules of the said schemes for becoming a member of the said scheme, the age of retirement of the employees is 58 years. Therefore, having opted for the scheme and availed of the benefits thereunder, the respondent had acquiesced himself to the condition of retirement age to be 58 years. The respondent has even availed of the benefits of the said gratuity-cum-life Assurance Scheme under the payment of Gratuity Act. The said benefit of gratuity is available to an employee in the petitioner company retiring at the age of 58 years and not is 60 years. Therefore also, the Industrial Tribunal has erred in

holding that the age of retirement for the respondent in the petitioner company is 60 years and not 58 years.

23.He has further submitted that even if it is assumed that the Model Standing Orders are applicable to the petitioner company, then also, it is not necessary that the age of retirement or superannuation would be 60 years ipso facto. Even as per the Model Standing Orders, the age of superannuation may be of 60 years. The word used by the legislature is “may” and not “shall” and, therefore, it cannot be said that the age of superannuation has to be of 60 years, if Model Standing Orders are applicable to any establishment. He has, therefore, submitted that the age of superannuation for the employees of the petitioner company can never compulsorily be 60 years, particularly when the respondent was aware and had agreed to the condition that

superannuation age is of 58 years by agreeing and accepting the letter dated 14.06.1995. Lastly, Mr. Chudgar has submitted that as it is having common service conditions at all its branches throughout the country and since the age of retirement is of 58 years, if the impugned award is allowed to be implemented, the same will have adverse repercussions on the other units/branches of the petitioner company and hence, the impugned award deserves to be quashed and set aside.

24.Mr. Chudgar has further submitted that there is no certified standing order. Even no service conditions are prescribed and hence, procedure is not required to be followed. Even clause 27 of the Moral Standing Order does not specify the age of retirement at 60 years. It simply says that either the age of retirement is 60 years or any other date. He has, therefore, submitted that the option is given

to the employer to prescribe the date of retirement. He has further submitted that clause 27 refers to the word agreement which has not been defined in the Standing Order. By virtue of the communication, it has been agreed upon between the petitioner and the respondent workman that the age of retirement is fixed at 58 years and accordingly, all the benefits have been derived by the respondent – workman.

25.Mr. N.R. Sahani, learned advocate appearing for the respondent – workman has submitted that the respondent was entitled under the Standing Orders to work till he attains the age of 60 years. His premature retirement was illegal and, therefore, it was required to be treated as absolutely null and void. The Standing Orders have statutory flavor and they are binding conditions of service. There is no power available to the employer to modify the service conditions at the time of issuing the

annual increment letters. All the workers were required to sign such letters for obtaining their annual increments and the only purpose of such letters appear to impose / modify the age of retirement and to create such records in case of litigation. The workman cannot be expected to protest against such award of annual increments, from year to year. There is no question of the Company taking any action based on such letters, because it is wrong practice and an unfair method adopted by the employer for the purpose of pressurizing the individual worker. The Tribunal has rightly decided that the petitioner was entitled to work till he attains the age of 60 years.

26.Mr. Sahani has further submitted that any service condition contrary to the applicable Standing Orders is required to be treated as nullity. For this purpose, he relied on the decision of the Hon'ble Supreme Court in case

of Western India Match Company, AIR 1973 S.C. 2650 wherein it is held that it is now well settled that the employer cannot enter into an agreement with a workman which is inconsistent with the standing orders of the Company. The terms of the standing orders would prevail over the corresponding terms in the contract of service. While the standing orders are in force it is not permissible for the employer to seek their statutory modifications so that there can be one set of standing orders in respect of certain employees and another for the rest. In other words the employer cannot enforce simultaneously the standing orders regulating the classification of workman and a special agreement with an individual workman setting his categorisation.

27.Mr. Sahani has further submitted that in the present case also, the alleged agreement is inconsistent with the model Standing Orders

which provide for the retirement age of 60 years. The relevant Standing Order says that the age for retirement or superannuation of the workmen may be 60 years or such of the age as may be agreed upon between the employer and the workmen by an agreement, settlement or award, which may be binding on the employer and the workmen under any law, for the time being in force. This Standing Order is absolutely binding and final and though the Tribunal has held that the respondent – workman was entitled to the age of retirement at 60 years, the Tribunal has no justification for withholding any part of back wages on the ground that the petitioner had signed a letter giving annual increment.

28.Mr. Sahani has relied on the decision of the Hon'ble Supreme Court in the case of *Salem-Erode Electricity Distribution Co. (P) Ltd., V/s. Their Employees' Union, AIR 1966 S.C. 808*

wherein it is held that it is not permissible for an industrial establishment to have two sets of Standing Orders to govern the relevant terms and conditions of its employees. The scheme of the relevant provisions of the Act in the light of the matters specified in the Schedule in respect of which Standing Orders are required to be made do not allow an establishment to have two sets of Standing Orders under the Act.

29. Mr. Sahani has further relied on the decision of this Court in the case of *Indian Oil Corporation Limited V/s. Mahendrabhai R. Patel & Another, 1987 (1) G.L.R. 154* wherein it is held that it is only that appropriate Government which referred the matter will be the "appropriate Government" for publishing the report or award under Section 17 even though the "appropriate Government" is changed during the pendency of the award proceedings by virtue

of any notification by the Government on the strength of Section 2 of the Industrial Disputes Act, 1947. The “appropriate Government” will be that Government 'which makes the reference of an industrial dispute for adjudication'. The subsequent consequence that follows by such reference is relatable to the said “appropriate Government” which has referred the matter under Section 10. The proceeding that is continued by virtue of such reference will have its logical end by passing an award and such an award to be published under Section 17 has to be so published by the “appropriate Government” which referred the matter for adjudication.

30.Mr. Sahani has, therefore, submitted that subsequent change in the status of the Company by way of merger, amalgamation or by any other mode, would not alter the position of the Company vis-a-vis its workers, so far as their

service conditions are concerned and hence the the award passed by the Industrial Tribunal must be upheld to the extent it holds that the age of retirement of the workman is 60 years. However, the said order is required to be reversed to the extent it reduces the part of salary of the respondent during the period between 58 to 60 years.

31.After having heard learned advocates appearing for the respective parties and after having gone through the award passed by the Industrial Tribunal and after having examined the relevant provisions of the Industrial Employment (Standing Orders) Act, 1947 as well as Model Standing Orders and after having carefully considered the authorities cited before the Court, the Court is of the view that while holding the petitioner establishment as an industrial establishment, the tribunal has relied on its earlier award passed in the case

of Mr. N.G. Mehta wherein the concerned establishment was held as an industrial establishment under Section 2(e)(iv) of the said Act. The said award was challenged before this Court in Special Civil Application No. 6539 of 1996. However, the matter was settled between the parties out of the Court and hence, there is no decision on merit of this Court on the issue as to whether the petitioner establishment is an industrial establishment or not. It is, therefore, necessary to deal with this issue first in this matter. It is an admitted position that by process of time, the petitioner establishment does not remain a division of Sarabhai Group of Companies, but it is a part of Multi-national company. The petitioner is carrying on the business of consultancy services and market research. The industrial Tribunal has mainly held the petitioner establishment as an industrial establishment under the provisions of Clause

(iv) of Sub-section (e) of Section 2 of the Act. There is no dispute about the fact that the said Clause (iv) covers within its ambit the establishment carrying on business for the purpose of fulfilling a contract with other industrial establishment and is employing workmen for that purpose. Therefore, an establishment or a Contractor, who for the purposes of fulfilling a contract with any particular industrial establishment, does not employ workmen can ever be said to be covered by the said definition. Admittedly, the petitioner establishment is not such an establishment or a Contractor who employs workmen for the purpose of fulfilling a contract with any particular industrial establishment. The petitioner is also not doing any job work for and on behalf of any particular industrial establishment nor engaging workmen by virtue of which it may be covered under Sub-Clause (iv) of Sub-section

(e) of Section 2 of the Act. The petitioner establishment is having large number of clients all over the country, for and on behalf of which it has been carrying on market research or has been rendering services by way of consultants or advisors. The petitioner establishment cannot, therefore, be said to be an industrial establishment within the definition of Section 2(e)(iv) of the Act.

32. The tribunal has not rightly invoked other sub-clauses of Section 2(e), as the said sub-clauses are not applicable to the petitioner establishment which is not engaged in any production, manufacturing or processing activity and the law is settled on this point. Mr. Chudgar has, therefore, rightly derived support from the decisions of the Hon'ble Supreme Court referred to above for the purpose of establishing that the petitioner is neither an industrial establishment within the meaning

of Section 2 (m) of the Payment of Wages Act nor a factory under the provisions of the Factories Act. If the petitioner establishment is not an industrial establishment, there is no question of application of the Act or Model Standing Orders.

33.Even if it is assumed that the petitioner establishment is an industrial establishment, there is no Certified standing Order of the petitioner establishment. It is also an admitted fact that the condition of service or the appointment order issued in favour of the respondent – workman does not specify the age of retirement at 60 years. On the contrary, from 1987 onwards the petitioner had applied at all its branches throughout the country the Schemes, namely, Employees Group Savings Linked Insurance Scheme and Employees Group Gratuity-cum-Life Assurance (Cash Accumulation Scheme), and retirement age specified therein was 58

years and the employees including the respondent – workman agreed to it and gave their consent in writing and premiums were also deducted. Not only this, by letter dated 14.06.1995, the petitioner company informed the respondent – workman while granting annual increment along with other benefits that the date of retirement was 58 years. The respondent – workman has not objected to the said letter. The petitioner company, thereafter wrote another letter dated 01.11.1995 stating that the respondent – workman was to retire on 30.11.1995 on completion of 58 years. The accounts were settled and the dues were paid to the respondent – workman in March, 1996. The respondent – workman was also engaged purely on temporary basis and special project work was assigned to him till March 1996 and only after termination of the said work, the respondent – workman has filed the complaint before the

Industrial Tribunal. This shows that after having accepted the terms and conditions and after having derived the benefit, the respondent – workman has filed the complaint before the Industrial Tribunal.

34.It is true that this Court has taken the decision in Special Civil Application No. 12927 of 1994 decided on 12.12.1994 wherein it is held that by virtue of Section 32 (2) of the Industrial Disputes Act, approval of the industrial tribunal was required to be taken if the respondent employee was to be retired at the age of 58 years. The Court further proceeded to observe that this was because in its contract of employment, age was not stipulated and, therefore, there are admittedly not being any Standing Orders adopted by the petitioner but Model Standing orders became applicable. According to the Model Standing Orders, the age of retirement was admittedly 60

years. The Court, therefore, held that the Industrial Tribunal in its pithy judgment rightly held that in absence of any lawful agreement, settlement or award, the retirement age prescribed in the Model Standing Orders could not have been reduced to 58 years from 60 years. It appears from this decision that the Court has proceeded on the footing that the Model Standing Orders prescribed admittedly the age of retirement at 60 years. However, a plain reading of the Model Standing Orders specifically states that either it is 60 years or any other date. In the present case also, neither the condition of service nor the appointment order stipulates the date of retirement at 60 years. So, the date is not fixed and by virtue of the agreement, the said date was fixed way back in 1987 and thereafter, it has been specifically conveyed even in 1995 that the date of retirement is 58 years. The Court is, therefore, of the view that the said

decision rendered in Special Civil Application No. 12927 of 1994 decided on 12.12.1994 does not render any assistance to the respondent – workman.

35.The Court is, therefore, of the view that neither the issue as to whether the petitioner establishment is an industrial establishment nor the issue as to whether Model Standing Orders are applicable to the petitioner establishment, were concluded by the earlier judgments of this Court. As a matter of fact, there are no two sets of Standing Orders as contended by Mr. Sahani. It has been stated that in all branches throughout the country, the petitioner has been following the same set of rules and regulations and the employees are retiring at the age of 58 years. Even in the case of Western India Match Company (Supra), on which heavy reliance was placed by Mr. Sahani, it was observed that while it was open

to the employees to frame Standing Orders for their concerns, orders framed by them have, therefore, to be certified by the Certifying Officer. Section 4 of the Act enjoys upon him to agitate upon the fairness and reasonableness of the provisions of the Standing Orders framed and while doing so, he is directed to consider and evoke the social interest in the claims of the employer and in the times of the workman. Modification of the Standing Orders is permissible under Section 10 but that can be achieved whether by the workman or the employer, only in the prescribed manner and contravention of the Standing Orders is visited with heavy penalty. In the present case, since there is no Certified Standing Order and the Model Standing Order does not lay down that the date of retirement is only 60 years and not any other date, it cannot be said that the petitioner establishment has violated the provisions of the Standing Orders.

Accordingly, by virtue of the above referred agreement, the date of retirement was prescribed at 58 years.

36.In the above view of the matter and considering the entire facts and circumstances of the case, the Court is of the view that the Tribunal is not justified in holding that the date of retirement of the respondent workman is 60 years and not 58 years. The order of the tribunal is, therefore, quashed and set aside. The petition filed by the Company being Special Civil Application No. 6967 of 1997 is allowed. Rule is made absolute. The petition being Special Civil Application No. 8750 of 1997 filed by the respondent – workman is dismissed. Rule is discharged.

[K.A. PUJ, J.]

S*avariya*